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House of Representatives

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ONE HUNDRED SIXTEENTH CONGRESS

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September 20, 2019

The Honorable Zoe Lofgren
Chairperson
Committee on House Administration
1309 Longworth HOB
Washington, DC 20515

The Honorable Jerrold Nadler
Chairman
Committee on the Judiciary
2138 Rayburn HOB
Washington, DC 20515

Dear Chairperson Lofgren and Chairman Nadler:

We wanted to make you aware of the violation of a committee consultant contract that occurred on September 17, 2019 when the Committee on the Judiciary allowed a part-time political consultant to question a witness. During the hearing, the justification provided was that consultants are defined as staff under House Rule XI, clause 2(j)(2)(C) and the Committee on the Judiciary Rules which were amended on a party-line vote on September 12, 2019 allowing "staff" to question witnesses. However, this rationale is not consistent with Federal Code, the Committees' Congressional Handbook, and the signed consulting contract Chairman Nadler entered. Additionally, a dangerous precedent was set by extending the opportunity for a part-time political consultant to question a witness for thirty minutes while denying Ranking Member Collins, a duly elected Member of Congress the opportunity designate himself to do the same.

Pursuant to 2 U.S.C. § 4301 Committees can "procure the temporary services (not in excess of one year) or intermittent services of individual consultants, or organizations thereof, to make studies or advise the committee with respect to any matter within its jurisdiction or with respect to the administration of the affairs of the committee." This has been further distilled in the Committees' Congressional Handbook:

"The consultant is to act as an independent contractor and is not an employee of the Committee. The Committee on House Administration will not approve a contract if the services to be provided by the consultant are the regular and normal duties of Committee staff."

On February 12, 2019, Chairman Nadler submitted two consultant contracts to the Committee on House Administration for approval (*see attachment*). The Minority Members of the Judiciary Committee were not aware of the submission of these contracts and were not provided an opportunity to vote on these contracts prior to their submission to House Administration. The contracts submitted at that time included the following language:

“The Consultant shall have the title of Special Counsel to the Judiciary Committee.”

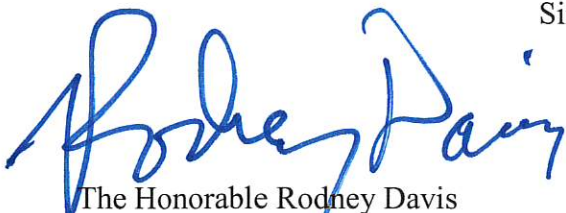
Inclusion of a title implied that these consultants were being hired to perform duties of staff since consultants, which serve as independent contractors and are not employees of the Committee, are not assigned titles. The Committee on House Administration Minority raised this issue, requested that the title be removed prior to consideration by the Committee on House Administration, and sought assurances that these contractors would not be performing the regular and normal duties of committee staff. Based on that request, Chairman Nadler submitted revised consultant contracts that did not include reference to a title (*see attachment*). The revised Consultant Contract Agreements were approved by the Committee.

Consultants are “independent contractors” and not employees of the House. As such, consultants are not bound by the same House Rules, Statute and regulations as committee staff. Consultants only must comply with clauses 1, 2, 3, 4, 8, 9 and 13 of House Rule XXIII regarding Code of Official Conduct but are not bound by the remaining clauses. Pursuant to House Rule XXIII, clause 18, consultants can still “lobby other Members, Delegates, or the Resident Commission or staff of the House on matters outside the jurisdiction of the contracting committee.” In addition, consultants do not sign an Oath of Office, submit financial disclosure statements and do not have to comply with the Dual Compensation or Outside Earned Compensation limitations. The rationale being that consultants are not employees but remain independent contractors. The potential conflict of interest for consultants is not known since the consultants are not required to disclose financial information about themselves or the entities for which they work or to disclose information about other clients or interests they serve outside of the contract.

The major benefit of consultants is that they provide valuable expertise in specific issue areas due to the work they conduct outside the House. The reason committees are authorized to hire consultants is that the consultants may “advise” the Committee Members and staff on matters within the Committee’s jurisdiction and not to “perform” the duties of the Members or staff. The only expertise these two consultants seem to have is giving a nearly \$200,000 combined to Democratic candidates and organizations and being outspoken critics of the President.

If the Judiciary Committee Majority Members wish to have these political consultants “perform” the duties of staff, then the consultant contracts should be terminated, and they should be hired as staff. This will ensure that they are held to the same ethical standards, outside income restrictions, limitations on lobbying, financial disclosures and obligations of all House staff.

Sincerely,



The Honorable Rodney Davis
Ranking Minority Member
Committee on House Administration



The Honorable Doug Collins
Ranking Minority Member
Committee on the Judiciary